IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 112 of 2000
Reserved on: 18-6-2007.

Date of Decision: 21 .06.2007.

State of H P. Appellant.

Versus

Kanwal Ram & others Respondents.

Coram

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]? No.

For the appellant : Sh.V K Verma, Additional Advocate General.

For respondent No.2 : Sh. Rakesh Manta, Advocate.

For respondents 1,3 & 4 ::Sh.S C Sharma, Advocate.

Surinder Singh, J . (oral)

This is an appeal filed against the judgment of acquittal passed in Criminal Case No. 251-3 of 1990 RBT No. 127-3 of 1993/91 passed by Chief Judicial Magistrate on 19.8.1999. In brief, the facts of the case giving rise to the instant appeal are that Shri C.M. Sharma, Range Forest Officer, Sarahan alleged that during the night of 29th May, 1990 at about 9.00 p.m, he was informed by Shri Bhupinder Singh Forest Guard Wild Life Division, Saharan that a truck was being loaded at the saw mill of Shri Kasang at Sarahan. On receiving this message, he along with Sadh Ram and Forest Guard Bhupinder Singh visited the spot and found that truck bearing registration number HIS 2375 was loaded with the timber of Rai species and it was about to start. Respondent Kanwal Ram was the Driver along with another occupant sitting in the vehicle. Krishan Kumar who was said to

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Whether reporters of the Local papers are allowed to see the judgment? Yes.

be the Munshi of respondent Sunil Kumar was also present. In the meanwhile, Alam Singh Forest Guard Incharge-Aviary and Pheasentry-Sarahan was also called who visited the spot. During the investigation, the respondents were found present on the spot and 121 logs of Rai were found loaded in the Truck and 10 Sawan logs were lying near the saw mill. The Range officer demanded permit, which the respondents could not produce. It is further alleged that Shri Anil Kumar respondent had produced cash memos of the firm M/s Anil Kumar firm, Lakkar Bazar, Shimla but the timber loaded in the truck did not tally with it. Further, there was no endorsement of Dhali check post. The timber also did not bear the hammer mark. Respondent Kasang Nargu was the owner of the saw mill. He also came on the spot and was asked to produce the saw mill register but the said timber was not found entered into it. Therefore, the register was taken into possession. Statements of the respondents were recorded which revealed that the timber was brought in the aforesaid truck by Krishan Kumar about four days back to the saw mill and in the morning of 29-5-1990, respondent Sunil Kumar had asked Kasang Nargu to saw the timber on assurance to produce the permit. In the mean while, respondent Sunil Kumar also reached the spot and told the Range officer aforesaid that the timber was brought to the saw mill by Shri Tarsem Lal. Since none of the persons could produce the permission, as such, damage report was chalked out. The timber was taken into possession. It is alleged in the complaint that the respondents had confessed the guilt and signed the Iqwal-nama but due to darkness and late night, the measurement of the timber was taken next day in the PWD Rest House. The information, regarding the seizure of the timber was also sent to the Court. Breach of Rule 5 11 (i) (ii) (iii) of H.P. Forest Produce Transit (Land Route) Rules, 1978 was alleged which is punishable under Section 41 and 42 of the Indian Forest Act but and against respondent Kasang Nargu, owner of the

saw mill, he is alleged to have committed the breach of Rule 14 (IV) wrongly mentioned as Rule 15 (IV) of the H.P. River Rule, 1971 which is punishable under Rule 19 of the Rules aforesaid.

On the complaint filed in the Court of Sub Divisional Judicial Magistrate, Rampur, finding a prima facie case, the learned Court summoned all the respondents. A notice of accusation was put to them. They denied the allegations. Accordingly, the trial started . The prosecution examined six witnesses to prove its case. The respondents were also examined under Section 313 of the Code of Criminal Procedure. Their case was of denial simplicitor. During the course of evidence, it also came in the evidence that the seized timber scants belonged to one Tarsem Lal who had produced the T.D. Permit. On going through the record and after appreciating the evidence, the learned trial Court acquitted all the accused persons on the ground that the evidence of the prosecution is contradictory and the statement of the complainant was not corroborated by any of the witnesses. Further, Purshotam Dass, aforesaid did not support the case of the prosecution. Accordingly, the respondents were acquitted and this judgment is under attack in this appeal.

In order to appreciate the rival contentions, I have re-appraised the evidence on record. Complainant C.M. Sharma is the Range Officer. He was informed about the alleged incident by Shri Bhupinder Singh Forest Guard . It was found that the truck was loaded with Rai timber. He found the truck driver Kanwal Ram and Krishan Kumar on the spot. The timber which was loaded in the truck did not contain any hammer mark nor could they produce any permit. The explanations given by the aforesaid persons were found to be incorrect. As such, he recorded the statement of Kanwal Ram (Exhibit PW1/A)and that of Sunil Kumar and Krishan Kumar as Exhibit PW1/B and PW1/C, respectively which was objected to and rightly so because the said Forest Officer was exercising the powers of Police Officer

for the purpose of seizure of the timber under the Forest Act. The statement is hit by Section 25 of the Indian Evidence Act and therefore, it cannot be taken into consideration. PW2 Alam Singh Forest Guard has stated that he was called along with the damage report to the Industry of Shri Kasang Nargu but in the cross-examination he has stated that except Kanwal Ram who was found standing near the vehicle, all other respondents were called by the Range Officer. Purshotam Dass (PW4) who is alleged to have been called on the spot has not supported the case of the prosecution. Bhupinder Pal Forest Guard has stated in his cross-examination that one Shri Tarsem Lal had come to the spot who had claimed the scans to be his own having been given to him under the T.D. Scheme. He did not remember whether he had shown any permit and further admitted that there was no timber lying in the saw mill. Sunil Kumar and Kasang respondents were not on the spot. He categorically admitted that the timber belonged to Tarsem Lal which he got under the T.D. Scheme. Sadh Ram Forest Guard (PW6) has also stated in the end of his statement that though the respondents had signed the damage report but they did not admit the guilt nor he could depose from where the timber had come or from which place it was brought. The transaction of the timber could not be proved.

The trial Court on the strength of the aforesaid evidence, has rightly concluded that these statements of the prosecution witnesses are contradictory and thus unsafe to sustain the conviction. Further, there is no evidence on record regarding transit of the timber from one revenue estate to another revenue estate or out of the forest division. In other words, neither the complainant could prove the transportation of either the timber or its sawing in the saw mill of respondent Kasang. Ten scants were also found away from the saw mill.

On the basis of the evidence discussed above, none of the charges against the respondents stand proved. The view which has been taken by

the trial Court is reasonable and possible and therefore, even if another view is deducible from the evidence, that benefit cannot be given to the prosecution as it is well settled law that when there are two views deducible from the evidence on the record, the benefit of favourable view is given to the accused. Hence, in these circumstances I do not find anything wrong in the judgment of the trial court. Therefore, the appeal is dismissed. The respondents are discharged of their bail bonds.

(Surinder Singh)
Judge.

June 21 , 2007.
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